MASTER AND SERVANT—ASSAULT BY ANOTHER SERVANT NOT WITHIN FEDERAL EMPLOYERS' LIABILITY ACT.—Plaintiff's husband, a section foreman, was killed by a laborer in his section gang at a time when both were at work upon defendant's road; the laborer was a dangerous and quarrelsome character, and deceased had informed his superior officer of this fact. The action was brought under the FEDERAL EMPLOYERS' LIABILITY ACT (U. S. Comp. St. 1913, §§8657-8665). The district court overruled a demurrer to plaintiff's petition. *Held,* on appeal, that the order of the district court should be reversed and the demurrer sustained on the ground that the assault was not committed in the course or scope of the laborer's employment, nor in furtherance of defendant's business. *Roebuck* v. *Atchison, T. & S. F. Ry. Co.* (Kan. 1917), 162 Pac. 1153.

It is indubitably true that the test to be applied in cases of this character is whether the act committed is within the "course" or "scope of" the servant's employment. If a servant step aside even momentarily to do some act unconnected with his employment the relation of master and servant is for that time suspended. *Davis* v. *Houghtelin,* 33 Neb. 582, 50 N. W. 765; *Morier* v. *St. Paul, etc. Ry. Co.,* 31 Minn. 351. In this connection, also, a distinction should be noted between "scope of employment" and "during period of employment." *Slater* v. *Advance Thresher Co.,* 97 Minn. 305, 107 N. W. 133; *Riley* v. *Roach,* 168 Mich. 294, 134 N. W. 14. On the above points the principal case is undoubtedly correct. However, there still remains the question of defendant's negligence. Under the FEDERAL EMPLOYERS' LIABILITY ACT, *supra,* the common law rules in regard to negligence apply. The master is liable only where the injury is attributable to his negligence. *Seaboard Air Line Ry. Co.* v. *Horton,* 233 U. S. 492, 58 L. Ed. 1062. In this case the Supreme Court, speaking through PITNEY, J., after stating that the employer is not a guarantor of the safety of the place of work, says "the extent of its duty to its employees is to see that ordinary care and prudence are exercised, to the end that the place in which the work is to be performed * * * may be safe for the workmen." In the principal case the defendant company had notice of the character of the defendant's assailant. In view of this did defendant exercise ordinary care and prudence to make deceased's place of employment safe? It is submitted that this should have been left to the jury to decide. It is true that most of the cases on this topic are those in which the employee was a notorious drunkard or insane. *Arlington Hotel Co.* v. *Tanner* (Ark. 1914), 164 S. W. 286; *Missouri, K. & T. Ry. Co.* v. *Day,* 104 Tex. 237, 136 S. W. 435. However, there is no reason why the principle should be limited to such cases. A dangerous and quarrelsome character can render a place quite as unsafe as can a notorious drunkard or insane person.

PARENT AND CHILD—LIABILITY FOR TORT OF CHILD.—Defendant owned an automobile which he had purchased for the pleasure of himself and the members of his family; his adult son, with his father's permission, was driving the automobile for his (the son's) accommodation, and negligently in-

jured plaintiff. *Held,* defendant is not liable. *Van Blaricom* v. *Dodgson* (N. Y. 1917), 115 N. E.

A similar view was taken by the Supreme Court of Michigan in the recent case of *Johnston* v. *Cornelius,* 159 N. W. 318, in which the son was a minor, 17 years of age. There would seem to be little doubt as to this conclusion, and yet the contrary result has been reached by a number of courts. All the courts admit that no liability arises merely from the relation of parent and child. In *Griffin* v. *Russell,* 144 Ga. 275, 87 S. E. 10, L. R. A. 1916 F 216, it was held that in keeping the car to be used for the comfort and pleasure of her family, including her minor son, the defendant would be liable for her son's negligence in driving it, on the ground that such use was her business or affair, and that the son was her agent or servant. In other words, the son is placed in the same class with a hired chauffeur. This view may be correct in such cases as *Denison* v. *McNorton,* 228 Fed. 401, where the son was driving other members of the family at the time of the accident, for their pleasure. But it is difficult to see how the principle of *respondeat superior* should apply when the child is *sui juris* and is driving the car solely for his own pleasure. It would seem that the presumption of agency, on which these decisions are based, can be rebutted only by showing an express refusal to allow the child to run the automobile. The reasoning of the New York court seems preferable. "The question whether one person is the agent of another in respect of some transaction is to be determined by the fact that he represents and is acting for him, rather than by the consideration that it will be inconvenient or unjust if he is not held to be his agent." The question raised in these cases has previously been discussed in 7 MICH. L. REV. 180, 526, and 12 MICH. L. REV. 153.

PERPETUITIES—FIFTY-YEAR OPTION AS A PERPETUITY.—A fifty-year option for a lease, with the right in the meantime to enter and explore for minerals, was alleged to be void because it suspended the power of alienation and violated the rule against perpetuities. *Held,* that the option was valid; the court remarking that to hold it void would invalidate every option for the purchase of land to be exercised within any period, no matter how short, not measured by lives in being. *Mineral Land Inv. Co.* v. *Bishop Iron Co.* (Minn. 1916), 159 N. W. 966.

The court in the instant case rests its conclusion on the construction of the statutory rule against perpetuities which prevails in Michigan and New York, as well as Minnesota, that a perpetuity is created by the suspension of the power of alienation for a period greater than the perpetuity period; but when an absolute fee can be conveyed by persons in being, as by the defendant in the instant case executing a release at the time the plaintiff conveys the title, there is no restraint on alienation, hence no perpetuity. *Avern* v. *Lloyd,* L. R. 5 Eq. 383, is followed to this extent, but see *In re Hargreaves,* 43 Ch. D. 401, also *Winsor* v. *Mills,* 157 Mass. 362, 32 N. E. 352. The notion that such options are void started in England in *London & S. W. Ry.* v. *Gomm,* 20 Ch. D. 256, which held that an option which might be exercised at a time more remote than the perpetuity-period was void. The